

Introduced by: Councilmember Elrich

First Reading: November 25, 2002

Second Reading: December 2, 2002

Effective Date: December 2, 2002

ORDINANCE NO. 2002-35

**(Revision of Noise Control Ordinance to Establish a Noise Control Board
and to Make Other Minor Changes)**

WHEREAS, the City Council adopted a Noise Control Ordinance effective November 1, 2000, to help control noise levels and to protect the citizens of the City from the adverse effects of excessive noise; and

WHEREAS, the Noise Control Ordinance provides for two or more citizens to be able to submit written complaints that a noise disturbance is being or has been generated in violation of the City's Noise Control Ordinance; and

WHEREAS, problems have arisen with the citizen noise complaint process established by the Noise Control Ordinance; and

WHEREAS, the City Council desires to establish a Noise Control Board to advise the City on its noise control efforts, to conduct hearings on citizen complaints of noise disturbances, and to make findings of noise violations; and

WHEREAS, the City Council feels that a citizen Noise Control Board is better suited than the court system to hear and resolve citizen noise disturbance complaints.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TAKOMA PARK, MARYLAND.

SECTION 1. Ordinance No. 2000-22, Noise Control, is amended as follows:

NOISE CONTROL

Sec. 1. Declaration of policy.

The Council of the City of Takoma Park finds that excessive noise harms public health and welfare and impairs enjoyment of property. The intent of this Noise Control Ordinance is to control noise sources to protect public health and to allow the peaceful enjoyment of property. This Noise Control Ordinance shall be liberally construed to carry out this intent.

Sec. 2. Exemption from County Noise Control Ordinance.

Pursuant to the authority conferred by Article 23A, Section 2B of the *Annotated Code of Maryland* and by Section 1-203 of the *Montgomery County Code*, the City of Takoma Park hereby

exempts itself from the provisions of Chapter 31B, Noise Control, of the *Montgomery County Code*, except as expressly set forth in this Ordinance.

Sec. 3. Definitions.

(a) *Ambient noise* means the total noise associated with a given environment, being usually a composite of normal or existing sounds from all sources near and far, excluding the noise source at issue.

(b) *Board* means the City of Takoma Park Noise Control Board.

(c) ~~(b)~~ *City Administrator Manager* means the City *Administrator Manager* of the City of Takoma Park and includes the City Manager's ~~Administrator's~~ designee.

(d) *City Clerk* means the City Clerk of the City of Takoma Park and includes the City Clerk's designee.

(e) ~~(c)~~ *Construction* means temporary activities directly associated with site preparation, assembly, erection, repair, alteration, or demolition of structures or roadways.

(f) ~~(d)~~ *dBA* means decibels of sound, as determined by the A-weighting network of a sound level meter or by calculation from octave band or one-third octave band data.

(g) ~~(e)~~ *Daytime* means the hours from 7 a.m. to 8 p.m. on weekdays and 9 a.m. to 10 p.m. on weekends and holidays.

(h) ~~(f)~~ *Decibel* means a unit of measure equal to 10 times the logarithm to the base 10 of the ratio of a particular sound pressure squared to the standard reference pressure squared. For this Noise Control Ordinance, the standard reference pressure is 20 micropascals.

(i) ~~(g)~~ *Enforcement officer* means a City police officer or City code enforcement officer.

(j) *Intermittent Noise* means a noise which goes on and off but which is steady while it is on.

(k) ~~(h)~~ *Leafblower* means any portable, hand held or back pack, engine powered device with a nozzle that creates a directable airstream which is capable of and intended for moving leaves and light materials.

(l) ~~(i)~~ *Nighttime* means the hours from 8 p.m. to 7 a.m. on weekdays and 10 p.m. to 9 a.m. on weekends and holidays.

(m) ~~(j)~~ *Noise* means sound created or controlled by human activity, from one or more sources, or sound from an animal source, heard by an individual.

(n) ~~(k)~~ *Noise disturbance* means any steady-state or impulsive noise occurring on either a continuous or intermittent basis ~~noise~~ that is:

- (1) unpleasant, annoying, offensive, loud, or obnoxious;
- (2) unusual for the time of day or location where it is produced or heard; or
- (3) detrimental to the health, comfort, or safety of any individual or to the reasonable enjoyment of property or the lawful conduct of business because of the loudness, duration, or character of the noise.

(o) ~~(h)~~ *Noise suppression plan* means a written plan to use the most effective noise-suppression equipment, materials, and methods appropriate and reasonable available for a particular type of construction.

(p) ~~(m)~~ *Person* means an individual, group of individuals, corporation, limited liability company, partnership, or voluntary association; or a department or agency of the City, County, or any other government to the extent allowed by law.

(q) ~~(n)~~ *Power lawn tool* means any mechanically powered lawn or garden tool, lawn mower, or powered snow removal equipment, or other similar device commonly used outdoors.

(r) ~~(o)~~ *Property line* means the real or imaginary line along the ground surface and its vertical extension which separates real property owned or controlled by one person from contiguous real property owned or controlled by another person or from any public right-of-way or from any public space.

(s) ~~(p)~~ *Receiving property or receiving noise area* means any real property where people live or work and where noise is heard.

(t) ~~(q)~~ *Sound* means an auditory sensation evoked by the oscillation of air pressure.

(u) ~~(r)~~ *Source* means any person, installation, device, or animal causing or contributing to noise.

Sec. 4. Regulations.

(a) In accordance with Chapter 2, Article 5, Administrative Regulations, of the *Takoma Park Code*, the City ~~Administrator~~ Manager may establish noise control regulations and standards as necessary to accomplish the purposes and intent of this Noise Control Ordinance and also may set fees by regulation to offset the costs of any City reviews or other actions required or authorized by this Ordinance.

(b) If no City regulations have been adopted specifying the procedures and methodology for measurement of noise levels, then the provisions of Montgomery County Regulation Number 29-

86, Procedures Governing the Measurement of Noise Levels in Montgomery County, Maryland, or any amended or successor County regulations setting procedures for the measurement of noise levels, are hereby adopted by reference.

Sec. 5. Noise level and noise disturbance violations.

(a) *Maximum allowable noise levels.*

- (1) Except as otherwise expressly provided in this Noise Control Ordinance or applicable regulations, a person must not cause or permit noise levels that exceed the following levels:

Maximum allowable noise level (dBA) for receiving noise area
(outdoor noise level measurements):

Daytime: 65 dBA
Nighttime: 55 dBA

- (2) In the event the measured ambient noise level exceeds the maximum allowable noise level (dBA) set forth in (a)(1), the noise level standard (the standard against which violations are measured) shall be adjusted so as to equal the ambient noise level plus 3 dBA.

(b) *Noise disturbance.* A person must not cause or permit a noise that creates a noise disturbance.

Sec. 6. Noise level and noise disturbance standards for construction.

(a) The provisions of Sec. 31B-6, Noise level and noise disturbance standards for construction, of Chapter 31B of the *Montgomery County Code*, as amended from time-to-time, and any applicable regulations, are hereby adopted by reference. The Montgomery County Department of Environmental Protection is given concurrent authority, along with City enforcement officers, to enforce the noise levels for construction and to evaluate and approve noise-suppression plans for construction activity in the City of Takoma Park.

(b) The prohibition on noise disturbance in Section 5 applies to construction activities.

Sec. 7. Measurement of sound.

(a) Noise levels shall be measured with a sound level meter meeting the standards of the American National Standards Institute (ANSI) S.1.4 - "Specifications for Sound Level Meters" or its successor. This instrument shall be set to the appropriate weight response scales and the meter to the slow response.

(b) Noise levels shall be measured at the nearest receiving property line, at any point along the curb in front of the property line upon which the noise is being generated, or at any other location on the receiving property or receiving noise area, unless this Noise Control Ordinance specifies a different measurement location.

~~(c) For multiple sources of sound, the sound level may be measured at any point to determine the source of a noise.~~

Sec. 8. Leafblowers and other power lawn tools.

(a) Except as provided in this section, a person must not sell, buy, offer for sale, or use a leafblower at any time that has an average sound level exceeding 70 dBA at a distance of fifty feet (50'). This requirement is in addition to any other noise level or noise disturbance standard that applies under this ordinance.

(b) The City may inspect, and upon request, a person must produce, any leafblower that is sold, offered for sale, or used in the City, in order to determine whether the leafblower complies with this section. A person who relies in good faith on a manufacturer's written representation of the sound level of a leafblower that has not been modified is not subject to a penalty for violating this section.

(c) No person shall use a leafblower or other power lawn tool outdoors during the daytime for more than two (2) hours of accumulated time during any 24 hour period on any individual lot or parcel of property and no leafblower or other power lawn tool shall be used outdoors during the nighttime.

Sec. 9. Animals.

No person shall allow a dog, bird, or other animal in his or her possession or control to persistently, habitually, or continuously bark, howl, yelp, or make other loud noise common to its species, and cause a noise disturbance to any person or to the neighborhood.

Sec. 10. Burglar and Vehicle Alarms.

(a) Audible burglar alarms for structures or motor vehicles are prohibited unless the operation of such alarm can be terminated within 30 minutes of being activated.

(b) Notwithstanding the requirements of subsection (a), any member of the Takoma Park Police Department shall have the right to take such steps as may be reasonable and necessary to disconnect any such alarm installed in any building, dwelling, or motor vehicle at any time during the period of its activation.

(c) The Takoma Park Police Department, or any authorized designee of the City, may tow or impound any motor vehicle in which an alarm has sounded continuously for more than 30 minutes.

- (1) Whenever a vehicle is removed pursuant to subsection (c) and the officer or agent knows or is able to ascertain from the registration records in the vehicle or the records of the state Motor Vehicle Administration the name and address of the vehicle owner, such officer or agent shall promptly give or cause to be given notice in writing to such vehicle owner of the fact of the vehicle removal and the reasons therefor, and the method by which release of the vehicle can be secured.
- (2) No person shall remove or permit the removal of a motor vehicle which has been towed or impounded pursuant to subsection (c) from the custody of the City or from the place in which the vehicle is being held without first obtaining authorization from the City, a court order, or paying any citation issued for violation of this Noise Control Ordinance and all fines, penalties, costs and other charges associated with the towing or impoundment of the vehicle.

Sec. 11. Exemptions.

This Noise Control Ordinance does not apply to:

- (a) Emergency operations by fire and rescue services, police agencies, or public utilities and their contractors.
- (b) Sound created by snow removal, street sweeping, and leaf collection activities by the City.
- (c) Sound created by garbage, trash, solid waste, and recycling collection activities by the City provided that such activities shall not begin prior to 6:30 a.m. If the National Weather Service forecast for the day is for a high temperature of 90 degrees or higher or a heat or air quality advisory has been issued for the Washington, DC metropolitan area, then garbage, trash, solid waste, and recycling collection activities by the City may commence at 5:30 a.m.
- (d) Sound created between 9 a.m. and 10 p.m. by sports, amusements, or entertainment events or other public gatherings operated according to the requirements of the appropriate permit or licensing authority. This includes athletic events, carnivals, festivals, parades, band and orchestra activities, and public celebrations.
- (e) Sound created by City-sanctioned or City-sponsored activities provided the activity is being operated in accordance with the requirements of any permit and City rules for the event. This includes, but is not limited to, the Takoma Park Farmer's Market and 4th of July events (parade, concert, and fireworks).

Sec. 12. Waivers.

(a) *Temporary waiver.*

- (1) The City ~~Administrator~~ Manager may waive any part of this Noise Control Ordinance for a temporary event if, in the sole judgment and discretion of the City ~~Administrator~~ Manager, the noise the event will create or cause in excess of the noise level limits established under this Noise Control Ordinance is offset by the benefits of the event to the participants or the public and the noise of the event will not cause undue hardship or disturbance to the surrounding area. The City ~~Administrator~~ Manager may impose terms and conditions appropriate to reduce the impact of the noise level exception on the grant of a temporary waiver.
- (2) An application for a temporary waiver shall be filed with the City Clerk, or such other office as the City ~~Administrator~~ Manager shall designate. The applicant shall certify that notice of such temporary waiver application has been provided to all properties contiguous to the property where the event will occur, and to all properties opposite said property measured at right angle to the intervening street or streets, and to the president or other designated representative, as shown by the City's records, of the local neighborhood association. The application for a temporary waiver shall not be approved less than 10 days after the notice required under this subsection has been given. No person or household may receive more than one temporary waiver in any calendar year.

(b) *General waiver.*

- (1) The City Council may waive any part of this Noise Control Ordinance if the City Council determines that compliance in a particular case is not practical and would impose undue hardship.
- (2) An application for a general waiver shall be filed with the City Clerk, or such other office as the City ~~Administrator~~ Manager shall designate. The City Clerk or the City ~~Administrator~~ Manager shall notify the City Council of the receipt of an application for a general waiver and the City Council shall schedule a public hearing on the application within 60 days of such notification.
- (3) At least 30 days before the public hearing, the applicant shall advertise the hearing by:

- (i) publishing a notice in a newspaper of general circulation in Montgomery County, Maryland;
 - (ii) posting a sign on the property which is the location of the noise source; and
 - (iii) mailing or delivering notice of such general waiver application to all properties contiguous to the property which is the location of the noise source, and to all properties opposite said property measured at right angle to the intervening street or streets, and to the president or other designated representative, as shown by the City's records, of the local neighborhood association.
- (4) Based on the evidence presented at the public hearing, and on any City staff report or other reliable information, the City Council may grant a waiver for up to 3 years, upon such terms and conditions as the City Council deems appropriate to reduce the impact of the noise level exception.

(c) *Violation of waiver.* The City ~~Administrator~~ Manager may suspend, modify, or revoke a temporary waiver or a general waiver if the City ~~Administrator~~ Manager determines that a person has violated the terms or conditions of the waiver.

Sec. 13. Enforcement and penalties.

(a) Unless a different penalty is stated, a violation of this Noise Control Ordinance is a Class C municipal infraction.

(b) If an enforcement officer finds that a person has violated this Noise Control Ordinance, the enforcement officer may issue a notice of violation and correction order to the person. The notice shall include the following information:

- (1) the section of this Noise Control Ordinance that the person violated;
- (2) the date, nature, and extent of the violation;
- (3) the action required to correct the violation;
- (4) if the enforcement officer requires a compliance plan, the deadline for submitting the plan; and
- (5) the deadline for compliance.

(c) The compliance plan referred to in subsection (b)(4) must establish a schedule for achieving compliance with this Noise Control Ordinance, as specified in the correction order. A

compliance plan, and any amendments to a plan, are not effective until the enforcement officer approves the plan or amendment. An action allowed under an approved compliance plan does not violate this Noise Control Ordinance.

(d) A notice of violation and correction order under subsection (b) is not required before a municipal infraction citation for violation of this Noise Control Ordinance may be issued. An enforcement officer may issue a municipal infraction citation for a violation of this Noise Control Ordinance if the enforcement officer:

- (1) witnesses the violation; and/or
- (2) determines that the noise level being generated exceeds the maximum allowable noise level set forth in Sec. 5 of this Noise Control Ordinance.
- ~~(2) receives signed, written complaints from at least two reliable witnesses of a noise disturbance. Complaints by two witnesses are required to issue a citation under subsection (d)(2), but are not required to prove that a person violated this Noise Control Ordinance.~~

(e) Noise Disturbance Complaints.

- (1) Signed, written complaints of a noise disturbance may be submitted by two or more City residents (see definition of "noise disturbance" in Sec. 3(n) of this Noise Control Ordinance).
- (2) Noise disturbance complaints shall be filed with the City Clerk, on the City Two-Party Noise Disturbance Complaint form, within 10 days of the occurrence of the alleged noise disturbance. Any complaint which is received by the City Clerk more than 10 days after the date of the alleged noise disturbance shall be rejected. The City Clerk shall date-stamp the noise disturbance complaint on the day the complaint is received, assign the complaint a number, and forward the complaint, along with any supporting documentation, to the Noise Control Board (see Sec. 14 of this Noise Control Ordinance).

~~(f)~~ (e) The City may seek injunctive or other appropriate judicial relief to stop or prevent continuing violations of this Noise Control Ordinance.

~~(g)~~ (f) In addition to any other penalty or enforcement action under this Noise Control Ordinance, an enforcement officer may issue a stop-work order or an order to cease the violation to any person who violates any provision of this Noise Control Order. A stop work order or an order to cease the violation also may be issued on the basis of signed, written complaints from at least two reliable witnesses setting forth the facts of the alleged violation.

- (1) Any person who receives such a stop work order or order to cease the violation shall immediately cease the activity which constitutes the violation. The person shall comply with all terms and conditions imposed by the enforcement officer before the activity may resume.
- (2) Violation of a stop work order or order to cease the violation shall be a Class A municipal infraction.

~~(h)~~ ~~(g)~~ In the event of construction work, commercial activity, or other work for hire, the person who violates this Noise Control Ordinance and the person responsible for the management or supervision of the construction site, area, property or activity from which the noise source originates are jointly and severally responsible for violations of this Ordinance and shall abide by any stop work order or order to cease the violation.

~~(h)~~ — Any person aggrieved by a violation of this Noise Control Ordinance may file civil action in any court with jurisdiction against a person responsible for the alleged violation. The aggrieved person must notify the alleged violator and the City Administrator Manager of the alleged violation at least 45 days before filing the action. A person must not file an action under this subsection if the City has issued a municipal infraction citation or filed an action for injunctive or other appropriate relief against the alleged violator regarding the same violation.

Sec. 14. Noise Control Board.

(a) Establishment and membership.

(1) A City of Takoma Park Noise Control Board is established to assist and advise the City on noise control issues, including administration and enforcement of this Noise Control Ordinance, and to adjudicate noise disturbance complaints.

(2) The Board shall consist of seven active members appointed by the Council. All members shall be residents of the City. Board members shall be appointed for a term of three years, except that three of the initial appointees shall serve two-year terms. Terms shall begin on April 1 and end on March 31.

(3) The term of a Board member who is appointed to replace a member who cannot complete his or her term shall be for the remainder of the term of the Board member being replaced.

(4) A Board member who resigns, who is removed, whose term expires or who ceases to reside in the City is ineligible to continue to serve on the Board except that, at the discretion of the Chairperson, he or she may continue as an inactive member of the Board to complete work on cases in which he or she participated as an active member of the Board. This participation may include the approval and signing of Board decisions on noise disturbance complaints.

(5) The Council may, by resolution, remove a Board member before the Board member's term has expired if the Council determines that the Board member has become incapacitated or has failed to reasonably perform his or her duties as a Board member.

(6) The Board shall elect one member as Chairperson and another member as Vice Chairperson to serve at the pleasure of the Board. The Board shall meet at the call of the Chairperson as required to perform its duties, but not less often than semi-annually. A majority of the active members of the Board constitute a quorum for transacting business. The Board may act by a majority vote of those present.

(7) The Board may adopt rules of procedure which further regulate its operations and the conduct of hearings.

(b) Hearings on Noise Disturbance Complaints.

(1) When a noise disturbance complaint under Sec. 13(e) is received, the Board shall schedule a hearing on the complaint and give reasonable advance notice of the date, time, and place of the hearing before the Board to the persons who filed the noise disturbance complaint ("the complainant") and the alleged violator. The alleged violator also shall be served with a copy of the noise disturbance complaint.

(2) The hearing notice and noise disturbance complaint shall be deemed to be properly served on the alleged violator if the notice and complaint is:

- (i) Delivered to the alleged violator personally;
- (ii) Sent by certified mail and the return receipt is returned indicating that the certified mail was received by the alleged violator;
- (iii) Left at the alleged violator's residence or place of business with a person of suitable age and discretion; or
- (iv) Mailed by first-class mail to the last-known address of the alleged violator and posted in a conspicuous location on the property where the noise disturbance violation is alleged to have occurred.

(c) Hearing Process.

(1) The Chairperson of the Board is authorized to designate three active members of the Board to sit as a panel to conduct a hearing on any noise disturbance complaint. The Chairperson of the Board shall endeavor to rotate panel membership from time to time among the active members of the Board. If the parties agree, a hearing may proceed before two members of the Board.

(2) The hearing shall be open to the public. At the hearing, the complainant and the alleged violator may present testimony and evidence to substantiate any material point. All testimony shall be given under oath or affirmation. Each party shall have the right to cross-examine

opposing witnesses, to submit rebuttal evidence, and to present summation and argument. The Board panel also may ask questions of witnesses and enter its own evidence.

(3) The Board panel may admit and consider evidence which would be commonly accepted by reasonable and prudent people as having a causal relationship to the matter before the Board panel. The Board panel may exclude from evidence irrelevant and repetitious testimony and documents.

(4) The burden of proof of establishing a violation of the Noise Control Ordinance shall be on the party who filed the Noise Disturbance Complaint and shall be met by a preponderance of the evidence.

(5) An audio record of the hearing shall be made. The record of the case shall consist of the audio recording and any written documentation accepted into the case file. The record of the case shall be open to inspection by any person. Upon request, the Board shall furnish copy of the record of the case to any person at the cost of supplying the same.

(d) Decision of the Board on a Noise Disturbance Complaint.

(1) After due consideration of the evidence and testimony presented at the hearing, the Board shall issue its decision on the noise disturbance complaint and give notice of its decision to all parties to the case. The Board's decision may be announced orally, following the hearing, or the Board may take the case under advisement and issue a written decision on the noise disturbance complaint within a reasonable time following the hearing.

(2) In the event that the Board finds that in favor of the complainant on the noise disturbance complaint, the Board may order the violator:

(i) To cease and desist from the conduct or activity which created the noise disturbance or to take other corrective action in order to abate or correct the violation of this Noise Control Ordinance; and/or

(ii) To pay a fine to the City of up to \$200.00 for each violation. If there is more than one violator or if the Board has found more than one noise disturbance violation, then the fine may be imposed on each violator. If the Board finds that this a repeat violation, *i.e.*, the violator has been found to have created a noise disturbance within a one year period immediately preceding the occurrence of the instant noise disturbance violation, then the Board may order the violator to pay a fine to the City of up to \$400.00 for each violation.

(3) In determining the amount of the fine to impose on a violator, pursuant to Sec. 14(d)(2)(ii) above, the Board shall consider whether the evidence presented at the hearing on the noise disturbance complaints indicates that significant mitigating factors warranting a reduction in the maximum amount of the fine to be imposed are present:

- (i) Whether the violator has previously been found to have violated this Noise Control Ordinance;
- (ii) Whether the violator has taken action reasonably calculated under the circumstances to prevent or mitigate future violations of this Noise Control Ordinance; and
- (iii) Whether the violation was not so egregious or lengthy in duration that a reasonable person would view the violation as reprehensible.

(e) Enforcement of Board Decision on a Noise Disturbance Complaint.

(1) A violator who fails to comply with a Board decision on a noise disturbance complaint may be issued a municipal infraction citation for a Class A offense.

(2) In addition to any penalty provided herein, compliance with a Board decision may be enforced by any appropriate action, at law or equity, in any court of competent jurisdiction.

SECTION 2. This Ordinance shall be effective immediately upon adoption.

Adopted this 2nd day of December, 2002, by roll-call vote as follows:

Aye: Porter, Austin-Lane, Dawes, Maack, Stewart, Williams
Nay: None
Absent: Elrich
Abstain: None

EXPLANATORY NOTE

1. Additions to the existing language of Ordinance No. 2000-22 (Noise Control) are shown by highlighting and underlining.
2. ~~Deletions~~ to the existing language of the Ordinance No. 2000-22 (Noise Control) are shown by ~~strikeout~~.

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